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Consideration of the draft United Nations Convention against Corruption

Draft United Nations Convention against Corruption**

V. Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds[1]

* A/AC.261/1.

** The present draft text is a consolidated version of proposals submitted by Governments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires from 4 to 7 December 2001. It was prepared at the Informal Preparatory Meeting (preamble and chaps. I-IV) and subsequently by the Secretariat at the request and following the guidance of the Informal Preparatory Meeting (chaps. V-VIII) (see also the report of the Informal Preparatory Meeting (A/AC.261/2)). The preamble and chapters I, General provisions, and II, Preventive measures, appear in document A/AC.261/3 (Part I); chapter III, Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement, appears in document A/AC.261/3 (Part II). Chapter IV, Promoting and strengthening international cooperation, is contained in document A/AC.261/3 (Part III) and the present document (A/AC.261/3 (Part IV)) contains chapters V, Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds, VI, Technical assistance, training and collection, exchange and analysis of information, VII, Mechanisms for monitoring implementation, and VIII, Final clauses.

[1] The draft text in this chapter has been divided into two parts. The first part contains a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The second part contains a consolidated version of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States of America (A/AC.261/IPM/19). The latter was produced by Peru and the United States during the Informal Preparatory Meeting. The division of the chapter into two parts was made solely for reasons of presentation and has no other implication or significance.

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Article 60
International cooperation for purposes of confiscation[2]

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article [...] [Confiscation and seizure], paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article [...] [Mutual legal assistance] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article [...] [Mutual legal assistance], paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

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[2] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 13 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex, the "Organized Crime Convention")). Austria and the Netherlands suggested that the contents of this article should offer the first elements for a solution to the problem of international cooperation in the case of transfer of embezzled public funds to a foreign country. Consideration could usefully be given to additional elements, which would, for example, accelerate procedures (priority treatment or direct contact between enforcement authorities; establishment of a clearing house; and inclusion of "abuse of power by members of the Government" as an additional offence). Colombia had proposed that this chapter contain two articles, entitled, respectively, "Prevention and combating of the transfer of funds of illicit origin derived from acts of corruption" and "Repatriation of funds derived from acts of

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 61

Option 1[3]

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds of crime or property to their legitimate owners or, in the case of embezzled public funds, return it to the relevant public funds.

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corruption", but had not proposed a specific text (A/AC.261/IPM/14).

[3] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 14 of the Organized Crime Convention, with a slight change to para. 2 in order to include embezzled public funds).

3. When acting on the request made by another State Party in accordance with article [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation] of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Option 2[4]

Disposal of confiscated proceeds of crime or property and the return of such proceeds to their countries of origin or to countries or persons authorized to receive them

1. Proceeds of crime or property confiscated by a State Party pursuant to articles [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

2. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

4. When acting on the request made by another State Party in accordance with articles [...] [Confiscation and seizure] and [...] [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

[4] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Article 62[4]
Return of property to the country of origin in cases of damage to state property

1. Notwithstanding the provisions of articles [...] [Confiscation and seizure], [...] [International cooperation for the purposes of confiscation] and [...] [Disposal of confiscated proceeds] of this Convention, each State Party shall adopt such measures as may be necessary to enable its central authorities or agencies with relevant responsibilities to return to the country of origin property constituting proceeds of crime that has been obtained to the detriment of that country.

2. In such cases, the property shall not be subject to the system of sharing between the requesting State and the requested State.

* * *

Preamble[5, 6]

The States Parties to this Convention,

Concerned that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, as well as to international efforts to promote economic development worldwide,

Recognizing that international cooperation is essential to the fight against corruption,

Determined to prevent, deter and detect in a more effective manner international transfers of assets illicitly acquired by, through or on behalf of public officials and to recover such assets on behalf of victims of crime and legitimate owners,

Acknowledging the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights,

Have agreed as follows:

[5] The text that follows is the second part of this chapter and contains a consolidated version of the proposals made by Peru (A/AC.261/IPM/11) and the United States (A/AC.261/IPM/19), as mentioned in footnote 1. For the reasons given below, the articles in this part do not follow the numbering used in the draft text. The first four paragraphs under the heading "Preamble" might eventually be contained in a preamble for the convention as a whole. Similarly, the article on "Use of terms" might eventually come under the overall section containing definitions, while the article on prevention might eventually come under a prevention chapter. However, the definitions, preambular language and prevention provisions of this proposal may not apply except in the context of this chapter. The decision on whether to break up the structure of the proposal would depend on the organizational structure of the convention as a whole.

[6] Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

Article [...][6]
Use of terms

For the purposes of this chapter:

(a) "Assets or property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(b) "Confiscation", which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;

(c) "Illicitly acquired assets" shall mean assets or property that are acquired by, through or on behalf of a public official through misappropriation, theft or embezzlement of public funds or the unlawful conversion of state property or through acts of bribery or extortion committed by a public official and shall include other property into which such assets have been transformed or converted;

(d) "Requested State" shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

(e) "Requesting State" shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets;

(f) "Public official" shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, any person exercising a public function for a government, including for a public agency or public enterprise, and any official or agent of a public international organization.

Article [...][7]
General provisions

1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions, in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption;

[7] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin; and

(d) States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.

2. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to provide the cooperation and assistance requested by another State Party.

3. For the purposes of this Convention, the recovery of assets, including funds, of illicit origin by the affected countries of origin shall be an inalienable right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.

Article [...][6]
Prevention

1. Each State Party shall establish, in accordance with its domestic law, appropriate oversight, investigative and prosecutorial institutions with sufficient authority to prevent and appropriately respond to the illicit acquisition of assets through the conduct of senior public officials and shall endeavour to endow such institutions with adequate resources to achieve those objectives.

2. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

(a) Issuance of advisories to financial institutions (i) on appropriate measures to identify current and former senior foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons; (ii) on appropriate records to maintain on accounts and transactions involving such persons; and (iii) on types of transactions and accounts to which such institutions should pay particular attention;

(b) Requiring financial institutions to undertake reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts;

(c) Requiring financial institutions to conduct enhanced scrutiny to high-value accounts sought or maintained by or on behalf of current and former senior foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall

be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

(d) Requiring financial institutions to report to competent authorities suspicious transactions involving accounts identified in subparagraphs (a), (b) and (c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit notification or disclosure of the report to legal or natural persons involved in the transaction.

3. States Parties shall cooperate with one another for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets, including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.[7]

4. States Parties shall cooperate with one another in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the "know-your-client" principle and the reporting of suspicious activities.[7]

5. States Parties shall cooperate with one another in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records should contain information relating to the amount of the transaction, the identity and domicile of the participants in the transaction, the legal capacity of anyone participating on behalf of a legal person and the identity of the true beneficiary of the transfer in question as well as an exact description of the transaction.[7]

6. In connection with paragraph 5, States Parties shall cooperate with one another for the purpose of preventing fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.[7]

7. Each State Party shall establish, in accordance with its domestic law, effective financial disclosure systems for its senior public officials and shall provide for appropriate sanctions for non-compliance. States Parties shall also consider taking such measures as may be necessary to permit their competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.

8. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require senior public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

9. States Parties shall give special consideration to agreeing with other involved States Parties that all or a portion of recovered assets should be committed to support initiatives and programmes to prevent corruption.

Article [...][7]
Financial intelligence units

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and of promoting ways and means of recovering such assets by, inter alia, establishing a financial intelligence unit that will freely exchange with other such units any information that it possesses without the need for legal formalities. The recipient financial intelligence unit should be able to use that information within its country in accordance with the legislation governing it.

Article [...]
Recovery mechanisms

Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

Access to courts

(a) Adopt such measures as may be necessary to permit another State Party to initiate legal action in its courts for ownership of illicitly acquired assets that are located in its territory, by presenting either:

(i) Evidence to establish title to or ownership of the assets; or

(ii) A final judgement establishing title to or ownership of the assets issued by the competent authorities of another State Party, which order may be given effect in the territory of the requested State to the extent permitted by the law of that State Party;

Enforcement of foreign confiscation judgements

(b) Adopt such measures as may be necessary to permit its competent authorities to give effect to a final judgement of another State Party ordering the confiscation of illicitly acquired assets or the payment of a sum of money corresponding to such assets;

Confiscation based on a foreign offence

(c) Adopt such measures as may be necessary to enable it to prosecute and punish the laundering of illicitly acquired assets of foreign origin and to confiscate

assets pursuant to investigations or proceedings involving illicitly acquired assets of such origin;

Provisional measures

(d) Adopt such measures as may be necessary, in accordance with principles of its domestic law, to enable it, at the request of another State Party, promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property for which there is a reasonable basis to believe that it will be subject to recovery as illicitly acquired assets. In addition to mechanisms to preserve property in anticipation of a domestic confiscation action, such measures shall include authority to restrain assets based upon a foreign arrest or charge related to their illicit acquisition, authority to give effect to a restraining order issued by a court of competent jurisdiction in the requesting State and authority to restrain assets upon a request setting forth a reasonable basis to believe that the property will be named in a confiscation judgement in the requesting State;

Restitution

(e) Consider adopting such measures as may be necessary to provide for restitution of illicitly acquired assets to the requesting State or to other victims of crimes; and

Other measures

(f) Consider adopting such other measures as may be necessary to facilitate the recovery of illicitly acquired assets.

Article [...][6]
Special cooperation provisions

1. In addition to the provisions established in chapter IV [International cooperation] of this Convention, States Parties shall afford one another the widest measure of assistance in the recovery of illicitly acquired assets in accordance with their domestic laws and, as may be appropriate, through the exercise of authority pursuant to this article.

2. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences, with a view to facilitating the recovery of assets, including funds, of illicit origin derived from acts of corruption.[7]

Confiscation and other measures

3. Following a request made pursuant to this chapter, a State Party in which illicitly acquired assets are situated shall:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation consistent with article [...] [Recovery mechanisms], paragraph 3, of this Convention and, if such order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting State consistent with article [...] [Recovery mechanisms], paragraph 2, of this Convention; or

(c) Submit a request for provisional measures to its competent authorities consistent with article [...] [Recovery mechanisms], paragraph 4, of this Convention; or

(d) Take such other measures as may be permissible under its domestic law to effect the recovery of such assets.

Requests for application of enhanced scrutiny

4. Upon an appropriate request from another State Party, a requested State shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Prevention], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.

Spontaneous information-sharing

5. Each State Party shall adopt measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on illicitly acquired assets to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that Party under this chapter.

Article [...]
Contents of a request

The provisions of chapter IV [International cooperation] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in chapter IV, requests made pursuant to this article shall contain sufficient evidence and information to support the underlying allegation, including the following:

(a) A complete description of the actions requested and of the assets to be restrained, seized or confiscated, including the location and value of the property;

(b) A statement identifying the legal and natural persons whom the requesting State believes to be victims, whether public or private;

(c) A detailed statement of facts sufficient to enable the requested State to seek appropriate orders under its domestic law, including a full description of the illegal activity and its relationship to the assets to be seized, restrained or confiscated;

(d) In the case of a request pertaining to the enforcement of a foreign judgement or restraining order pursuant to article [...] [Recovery mechanisms], subparagraph (b), of this Convention, a legally admissible copy of an order of the requesting State upon which the request is based, information as to the extent to

which execution of the order is requested, a statement specifying the measures taken to provide adequate notification to third parties and to ensure due process and, if involving an order of confiscation, an attestation by the competent authority of the requesting State that the confiscation order is final, enforceable and not subject to ordinary means of appeal; and

(e) Such additional information as the requested State may require.

Article [...]

Option 1[6]

Limitations on cooperation

1. The execution of measures pursuant to this chapter shall be in conformity with principles of due process and shall not prejudice the rights of bona fide third parties.

2. The execution of any cooperation measure under this chapter may be refused or provisional measures lifted if:

(a) The request is not made in conformity with the provisions of this chapter;

(b) The requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) The requested State does not receive sufficient or timely evidence regarding the underlying offences; or

(d) The illicit acts constitute minor offences or the illicitly acquired assets are of a *de minimis* value.

2. Before lifting any provisional measure taken pursuant to this chapter, the requested State shall, wherever possible, give the requesting State an opportunity to present its reasons in favour of continuing the measure.

Option 2[7]

States Parties shall not be entitled to refuse to cooperate with one another and shall accordingly afford mutual assistance with a view to expediting and providing guarantees in respect of proceedings initiated for the purpose of bringing about the return of assets, including funds, of illicit origin derived from acts of corruption to their countries of origin after being transferred. States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.

Article [...][6]
Disposition of assets

1. Illicitly acquired assets recovered pursuant to this chapter shall be disposed of in accordance with domestic law. When acting on the request of another State Party under this chapter, States Parties shall, to the extent permitted by domestic law:

(a) Give priority consideration to transferring the recovered assets in such a manner as to compensate the victims of the crime or to return the assets to their legitimate owners;

(b) Where appropriate, consider requiring that all or a portion of the recovered assets be used to support anti-corruption initiatives and programmes;

(c) Where appropriate, consider sharing confiscated assets with foreign authorities that assisted in the investigation, prosecution or judicial proceeding leading to the confiscation;

(d) Where appropriate, the requested State may deduct reasonable expenses incurred in the investigation, prosecution or judicial proceeding leading to the recovery of illicitly acquired assets prior to transferring or sharing such recovered assets pursuant to this chapter.

2. Each State Party shall adopt such measures as may be necessary to establish, consistent with principles of its domestic law:

(a) A mechanism for the consideration of claims by another State Party against illicitly acquired assets involved in a confiscation proceeding; and

(b) Authority to share confiscated assets with foreign authorities in recognition of assistance provided that leads to confiscation.

Article [...]
Additional provisions

1. If a State Party elects to make the taking of the measures referred to in this chapter conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

2. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken and to facilitate the disposition of assets pursuant to this chapter.

3. Each State Party shall furnish copies of its laws and regulations that give effect to this chapter and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

4. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.[7]

5. States Parties shall promote training and technical assistance among States Parties, international and regional bodies and private institutions with the objective of facilitating international cooperation and the identification and recovery of illicitly acquired assets. Such assistance should also aim to enhance the ability of States Parties to meet the requirements of article [...] [Contents of a request] of this chapter.

6. States Parties shall, in conformity with their respective legal systems, afford one another the widest measure of technical assistance in preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and in the recovery of such assets by their countries of origin through the

promotion of the mutual exchange of relevant experience and specialized knowledge.[7]

7. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and promoting the recovery of such assets by their countries of origin. Those programmes shall be concerned with:

(a) Detection and freezing of transfers of assets, including funds, of illicit origin derived from acts of corruption;

(b) Surveillance of the movement of assets, including funds, derived from acts of corruption and of the methods used to transfer, conceal or disguise such assets;

(c) Appropriate and efficient judicial and administrative mechanisms and methods for facilitating the repatriation of assets, including funds, of illicit origin derived from acts of corruption.[7]

* * *

VI. Technical assistance, training and collection, exchange and analysis of information

Article 63

Collection, exchange and analysis of information on the nature of corruption

Option 1[8]

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in corruption and criminal acts related specifically to corruption in its territory, the circumstances in which these offences are committed, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning corruption and criminal acts related specifically to corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. States Parties shall consider monitoring their policies and actual measures to combat corruption and criminal acts related specifically to corruption and making assessments of their effectiveness and efficiency.

[8] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 28 of the Organized Crime Convention (with slight changes)).

Option 2[9]

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.[10]

5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of the centre.[10]

Article 64
Training and technical assistance

Option 1[11]

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

[9] The first three paragraphs of this option contain consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and the Philippines (A/AC.261/IPM/24).

[10] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[11] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22) (art. 29 of the Organized Crime Convention (with slight changes)).

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(d) Collection of evidence;

(e) Control techniques in free trade zones and free ports;

(f) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(g) Methods used in combating corruption and criminal acts related specifically to corruption, committed through the use of computers, telecommunication networks or other forms of modern technology; and

(h) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussions on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Option 2[12]

1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in

[12] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

particular, in their respective national programmes and plans for combating corruption.

2. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action plans for combating corruption with the participation of national authorities and civil society.

3. Each State Party shall formulate, develop or upgrade training programmes designed specifically for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

(a) Identification of acts of corruption with a view to their subsequent punishment;

(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

(c) Gathering of evidence and investigative methods;

(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

4. States Parties shall, in affording mutual technical assistance in preventing and combating corruption, organize, when appropriate, subregional, regional and international conferences and seminars for the purpose of promoting cooperation and mutual assistance.

5. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

6. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

7. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition in applying this Convention through technical assistance programmes and projects.

8. States Parties shall make voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the Centre, programmes and projects in developing countries with a view to the implementation of this Convention.

Option 3[13]

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, magistrates and customs personnel and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Techniques used by persons suspected of involvement in offences covered by this Convention;

(c) Detection and monitoring of the movements of proceeds of crime, property or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(d) Collection of evidence;

(e) Methods used in combating corruption committed through the use of computers, telecommunication networks or other forms of modern technology; and

(f) Methods used in the protection of victims and witnesses, persons who report offences, informers and experts.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, where appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

[13] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Option 4[14]

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating crime committed through the use of computers, telecommunication networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to

[14] Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24).

maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 65
Other measures: implementation of the Convention through economic development and technical assistance

Option 1[15]

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption and criminal acts related specifically to corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption and criminal acts related specifically to corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption and criminal acts related specifically to corruption.

[15] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 30 of the Organized Crime Convention (with slight changes)).

Option 2[16]

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general and on sustainable development in particular.

2. States Parties shall make specific efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Option 3[17]

Financial assistance

Each State Party shall search for possibilities to share the revenues that it has obtained from its struggle against the crimes covered by this Convention

[16] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[17] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

with the other States Parties whose interests have been damaged by such crimes. Moreover, developed countries shall provide the necessary support to the development efforts of developing countries and provide the required tools for effective struggle against international corruption.

VII. Mechanisms for monitoring implementation[18]

Article 66
Conference of the Parties to the Convention

Option 1[19]

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat and eradicate corruption and to promote and review the implementation of this Convention through a systematic follow-up programme.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall:

(a) Conduct annual multilateral evaluations for the periodic review of the implementation of this Convention;

(b) Make recommendations to improve its implementation;

(c) Facilitate the exchange of information among States Parties;

(d) Encourage the mobilization of voluntary contributions to finance the systematic follow-up programme; and

(e) Promote the establishment of a fund to assist least developed countries in the implementation of this Convention.

3. Each State Party shall provide the Conference of the Parties with the information that it requires for the systematic follow-up programme concerning its programmes, plans, practices and results, as well as information on legislative and administrative measures adopted to implement this Convention.

Option 2[20]

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat corruption and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of

[18] Austria and the Netherlands suggested that this chapter should include an article entitled "Monitoring and follow-up", but indicated that the text should be completed at a later stage (A/AC.261/IPM/4).

[19] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[20] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article, including rules concerning payment of expenses incurred in carrying out those activities.

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles [...] [Training and technical assistance], [...] [Other measures: implementation of the Convention through economic development and technical assistance] and [...] [Prevention] of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Option 3[21]

States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.

Article 67[22]
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article [...] [Conference of the Parties to the Convention] of this Convention and

[21] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22). Turkey suggested that the formulation of this article should take into account other international conventions, especially the Organized Crime Convention.

[22] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article [...] [Conference of the Parties to the Convention], paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 68[23]

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles [...] [articles on criminalization] of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of the United Nations Convention against Transnational Organized Crime, except to the extent that article 5 of that Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

VIII. Final clauses[24]

Article 69

Option 1[25]

Relationship to other agreements and arrangements

1. This Convention shall not affect the rights and undertakings derived from international multilateral conventions.

2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this

[23] The first paragraph contains consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24). Paragraphs 2 and 3 contain text taken from the proposal submitted by Colombia.

[24] Austria and the Netherlands proposed that this chapter contain articles entitled "Signature and accession", "Ratification and depositary","Entry into force", "Amendment", and "Denunciation", but indicated that the text should be completed at a later stage (A/AC.261/IPM/4).

[25] Text taken from the proposal submitted by France (A/AC.261/IPM/10). France indicated that the proposed provision was based on article 39 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe; paragraph 1 has been slightly amended. France suggested that the aim of the provision was to maintain the commitments undertaken by States in other international instruments.

Convention for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or arrangement in lieu of this Convention, if it facilitates international cooperation.

Option 2[26]

Relations with other treaties and protocols

1. The present Convention repeals all preceding provisions relating to acts of corruption in all bilateral treaties existing between two States Parties.

2. This Convention may be supplemented by one or more protocols.

3. In order to become a party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

4. A State Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with the provisions thereof.

5. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 70[27]

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

[26] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

[27] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

Article 71[28]

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.[29]

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.[30]

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 72[31]

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [fortieth][32] [...][33] instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [fortieth][32] [...][33] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

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[28] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only.

[29] Proposal of Colombia.

[30] The last two sentences of this paragraph were proposed by Colombia.

[31] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only.

[32] Proposal of Colombia.

[33] Proposal of Mexico.

Article 73[31]
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 74[31]
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 75[34]
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Annex[35]

International Code of Conduct for Public Officials

I. General principles

1. A public office is a position of trust, implying a duty to act in the public interest. Therefore, public officials shall act solely in terms of the public interests of their country as expressed through the democratic institutions of government. They shall not do so in order to gain financial or other material benefits for themselves, their family or their friends.

2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them. In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office shall make choices on merit.

II. Conflict of interest and disqualification

4. Public officials shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict

[34] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13.

[35] From the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (General Assembly resolution 51/59, annex, supplemented with elements taken from the Nolan Principles Governing Conduct of Public Office Holders (United Kingdom of Great Britain and Northern Ireland, 1999)).

of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.

6. Public officials shall not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

7. Public officials shall at no time improperly use public funds, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

8. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. Accountability

9. Public officials are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

10. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and dependants.

IV. Openness

11. Public officials should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

V. Confidential information

12. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

VI. Political activity

13. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in their ability to perform their functions and duties in an impartial manner.